

**FEDERAL REGISTER: 43 FR 38556 (AUGUST 28, 1978)**

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Part 890

Grants for Mining and Mineral Resources, Research Institutes and Mineral Research Projects; Policies and Procedures

ACTION: Final rules.

**SUMMARY:** The regulations in this chapter set out the policies and procedures that will be followed by the Department of the Interior in administering title III of the Surface Mining Control and Reclamation Act of 1977. That title provides for the establishment of, and financial assistance to, mining and mineral resources research institutes in each State and for scholarships, fellowships, and mining and mineral research projects at those institutes.

EFFECTIVE DATE: August 21, 1978.

ADDRESS: Office of Surface Mining Reclamation and Enforcement, Department of Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David Maneval, Assistant Director for Technical Services and Research, 202-343-4264.

**SUPPLEMENTARY INFORMATION:**

Title III of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub.L. No. 95-87, 30 U.S.C. 1221, et seq., requires the Secretary of the Interior to prescribe rules and regulations to implement the provisions of that title. Title III provides for annual allotments to one institute in each State for 7 years and for research funds to each institute for mineral research grants, scholarships, and fellowships. Title III specifies the categories of research to be conducted, the funding criteria and the requirements for institutes to qualify for such funding.

Proposed regulations to implement title III were published in the FEDERAL REGISTER on June 5, 1978 (43 FR 24326). Twenty-one written responses were received on the proposed regulations. In large measure, the comments received were favorable with suggestions directed toward further clarification of terms or the simplification of procedures needed to implement the title III funding programs.

All comments have been reviewed and considered in the development of these final regulations. Responses to the comments have been summarized and listed below according to the section numbers of the subchapter. In this manner, the Office of Surface Mining hopes that the public will understand the response to each comment and therefore have a better understanding of the bases and purposes of the final regulations. Major or significant changes are treated below first, followed by specific comments directed to particular sections of the regulations.

Sections 880.1, et seq., have been redesignated 890.1, et seq. This redesignation is deemed minor and is discussed below after the substantive comments to avoid confusion. In order to remain consistent with the section number of the comments, the responses below are based on the old designation with the new section number indicated in parentheses.

**CHANGES IN THE REGULATIONS**

Based upon the comments received and the need to expand and clarify certain paragraphs, the Office has made three modifications.

First: In paragraph 880.8, eligibility for scholarships and fellowships (890.8), the requirements for filing applications for scholarship funds were included in this paragraph of the proposed regulations. To avoid the confusion caused by this combination of the eligibility and application criteria and to allow greater clarity and explanation of the requirements for filing applications, a new Section 890.13 was created. Accordingly, the filing requirements have been deleted from Section 880.8 (890.8) and this paragraph is now limited solely to the criteria for eligibility. These criteria have not been altered to any significant degree.

Under the new section for filing applications (890.13), however, a change has been instituted. This new section requires all institutes to file separate applications for scholarship funding. This change should facilitate the processing of scholarship

requests and provide the Office with greater documentation and control over the expenditure of these funds.

The second revision concerns the modification of the filing deadlines and the grant amounts established in Section 880.18 (890.20). Both the proposed filing deadline for the initial year and the grant limitations were impractical. In order to allow the advisory committee to recommend to the Director all eligible institutes and to allow the Assistant Director time to inform all such designated institutes of the precise funds available, the August 15, 1978, deadline has been replaced by a provision authorizing the Director to establish a reasonable deadline following designation proceedings by the advisory committee and notification by the Assistant Director to the institutes of the grant limitations.

The precise figures on grant limitations in Section 880.18 (890.20) have also been deleted. Proper computation of these amounts is possible only by first establishing the specific number of eligible institutes. Accordingly, under the new provisions of Section 890.20, this information will also be provided to the institutes after the advisory committee has completed its designation decisions. The institutes will have a reasonable time thereafter to submit their applications.

The third modification concerns the problem of joint funding. Numerous responses were received on this subject. Some suggestions called for direct Federal funding of noninstitute schools and others advocated funding only institutes but allowing the institutes to arrange for noninstitute participation. Under section 301 of the Act, the Office is prohibited from funding more than one institute per State and under section 302, research funds can only be made available to those institutes. An institute, on the other hand, is not similarly constrained. Section 303(b) specifically authorizes an institute to plan, conduct, administer, and pay for programs with noninstitute universities and individuals if such arrangements contribute to the solution of mining and mineral resources problems. To implement this provision, a new Section 890.14, "Permissible Transfers of Institute Funds" has been added.

## **SPECIFIC COMMENTS**

### **SECTION 880.2 (890.2)**

1. One commenter suggested that, given the emphasis in title III on the training function of the institute, the regulations should include an operational definition of "training," including continuing education programs and those designed to transform basic research into operational realities. This comment has been rejected because the term "training," as used in title III and proposed regulations, already encompasses these activities as well as all other activities reasonably related to training. In the final regulations, this term is meant to have the widest application, unrestricted by limiting definitions.
2. A number of commenters suggested changes in the objectives listed in paragraph 880.2(e) (890.2(e)). Several persons suggested enlarging the list to include their specialties, while others argued persuasively for a narrowing of emphasis to reflect the primary concern for mining and mineral technology research as opposed to research in an "allied field." Both changes have been rejected, however. Under the specific language of title III, research may involve the areas listed but is not limited specifically to them. The listing in paragraph 880.7(b) (890.7(b)) likewise is not all inclusive; it thus allows funding in areas not specifically mentioned. There is no need, therefore, to include on each list every conceivable area of study. 8557}
3. Some comments advocated the primary importance of a few fields of study. They have also been rejected. The intent of title III, as expressed in section 301(b), is to fund research not only in mining and mineral resources but also in their allied fields. Title III suggests no intent to limit the scope of the research to only a few of those fields or certain problems within those fields.

### **SECTION 880.5 (890.5)**

1. One commenter suggested that, given the definition of "Institute" as a competent and qualified research institute established in accordance with the provisions of title III, the regulations should be consistent in their use of the word "Institute" (upper case "I") as opposed to its noncapitalized form. This suggestion has been rejected. The capitalized word has no added significance; both forms refer to an "institute" as defined in paragraph 880.5(e) (890.5(e)).
2. Two comments were received requesting that the definition of "Scientists and Engineers" in paragraph 880.5(g) (890.5(g)) be changed. One individual suggested the inclusion of a more detailed definition of "engineer" and the other suggested that the definition be rewritten to emphasize the primary importance of mineral technology. Both suggestions have been rejected, however. The definition of "engineer" will be kept as broad as possible to remain consistent with the intent of Section 301(b) authorizing the institutes to draw upon the abilities of many academic disciplines to solve the

problems confronting mining and mineral extraction. For the same reason, the definitions will not be changed to show a primary emphasis on the mining and mineral extraction fields. There is no similar limitation expressed in Section 301(b).

3. Two comments suggested that the definition of "mineral resource research" be changed to include: (a) another discipline, and (b) to reflect and emphasize mineral technology. Both suggestions have been rejected. The Office believes that this paragraph is consistent with the language of Section 301(b).

#### **SECTION 880.6 (890.6)**

1. Numerous responses were received concerning our interpretation of the term "matching funds" as used in Section 880.6(e) (890.6(e)). Most individuals responding feared that this provision required newly allocated funds from the institutes over and above their present budgets to match all Federal funds on a dollar-for-dollar basis. This impression is wrong, however; no such restrictions have been placed on this term. "Matching funds" refers to all funds, new or existing, which are in some way directly allocated or related to the functioning or the operation of the mineral institute. If this nexus is already present at a level equal to or greater than the Federal funds to be received, then the requirements of this section have been satisfied.

2. Several commenters have also raised a related question about whether a university could appropriate certain grant funds to help defray general university expenses. The answer is no. The Office recognizes that a mineral institute is only a subunit of a much larger institution or university and that certain general expenses must be assumed by the institution itself. Sections 301 and 302 of the Act clearly provide, however, that the funds may be used for only three purposes: (1) To assist the mineral institute, (2) to fund research and related projects, and (3) to provide scholarship and fellowship programs. Appropriation of funds for matters unrelated to these activities is therefore prohibited.

Title III envisions a good-faith effort on the part of the States to help build and develop the mineral research institutes and future funding levels will be specifically reviewed by the Office to ascertain whether a State has met this good-faith effort. This review will take into consideration: (1) Past, present, and future budget levels for the mineral institutes, (2) the State's and university's commitment to the mineral institute, and (3) the effective use of prior Federal funds. This criterion has been added to Section 880.13 (890.15(b)(4)) concerning approval of allotments and award of grants.

3. One commenter raised the question concerning the role the Governor of a State played in determining an eligible institute under Section 880.6 (890.6). As provided in section 301(a) and restated in Sections 880.6 (d) and (f) (890.6 (d) and (f)), the Advisory Committee on Mining and Mineral Resources has primary responsibility for determining the eligibility of colleges and universities. If the committee determines that more than one public college or university in a State is eligible, then the Governor may, in the absence of a designation to the contrary by the State legislature, designate which university will serve as the State "institute" for purposes of this Act. A prior designation of an institution by a Governor cannot preempt the advisory committee's responsibility to make an eligibility determination. In short, designation by a Governor is not necessary unless the committee determines that more than one public college or university in a State is eligible to be the institute.

4. One commenter suggested that Section 880.6 (890.6) be enlarged to allow joint funding of noninstitute schools. This funding for only one institute per State. It is, however, possible for an institute to transfer some of its funds to other institutions to carry out part of its research programs. Under section 303(b) of the Act, institutes are authorized to plan and conduct their title III programs "in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved." Furthermore, moneys appropriated under Title III are available for paying the expenses of planning, coordinating, and conducting such cooperative research. To implement this provision more clearly, a new paragraph 890.14 has been added to the final regulations.

5. One commenter asked for clarification of the eligibility requirements for institutes. The specific question was whether an institute must be part of a university capable of accepting graduate and doctoral level students in some or all of the academic disciplines encompassed by title III. There is no such specific requirement in the title III or these regulations. Section 301(a) requires only that "a college or university have an eligible school of mines or division or department conducting a program of substantial instruction and research in mining or mineral extraction wherein education and research in mining or engineering fields are being carried out and wherein at least four full-time permanent faculty members are being employed." If an institute meets these requirements but its facilities are limited in some degree or area, an institute may use funds, made available under title III, to finance a portion of its research or programs at other facilities, as specifically explained by Section 890.14.

## **SECTION 880.7 (890.7)**

1. One commenter asked whether law enforcement problems were proper academic topics. The Office has rejected all proposals to limit the scope of title III. One of the primary objectives of the title III programs is to support research and training in mining and mineral resources problems related to the mission of the Department of the Interior. Law enforcement is an integral part of this mission and is therefore a proper and necessary topic for study. Furthermore, legal studies related to mining and reclamation are specifically authorized in Section 301(b) of the Act.

2. Several commenters suggested that Section 880.7(b) (890.7(b)) be modified to allow private industry and/or academic institutions to submit research topics. No revision is deemed necessary, however. The submission of research topics for review and approval by the Director and the Advisory Committee is not limited to the Department. Paragraph 880.7(b) already includes a provision for the submission of research proposals not listed or identified by the Department if fully explained and justified. On the other hand, if this provision is relaxed to allow unlimited submission of topics, the Director and Advisory Committee would lose their ability to orient the title III programs toward solving the specific problems faced by the Department. Because this is one of the primary objectives of title III, suggestions limiting Department control have been rejected. {38558}

## **SECTION 880.8 (890.8)**

One commenter pointed out that the section number for the annual institute status report was miscited. This error has been corrected and the proper section number has been inserted.

## **SECTION 880.9 (890.9)**

Two comments were received concerning this section. One comment suggested that the programs listed in paragraph (b) should reflect the institutes' primary concern for mining and mineral technology as opposed to certain allied fields. Another commenter suggested the inclusion of continuing education programs. These suggestions have been addressed in Sections 880.2 and 880.5 above. The provision of the section for an institute to share its funds with another component of the same college or university has been moved to new Section 890.14(a).

## **SECTION 880.10 (890.10)**

1. One comment questioned whether the term "institution" should be substituted for the term "institute" in Section 880.10 (890.10) because this section refers to initial allotments needed to permit an institution to form an institute. This suggestion has been rejected. The wording in the proposed regulations is correct. The word "institute" as defined in Section 880.5(e) (890.5(e)) means "a competent and qualified mining and mineral resources institute, center, or component of a college or university, established in accordance with the provisions of title III of this Act." Under Section 880.10 (890.10) only "institutes," i.e., those institutions found to be eligible under the requirements of Section 880.6 (890.6), may apply for initial allotments. The term "institute" is therefore proper.

2. Under Sections 880.10(c)(4) and (5) (890.10(c)(4) and (5)), several interpretive problems have developed concerning material required by an application. For instance, Sections 880.10(c)(4)(ii) (890.10(c)(4)(ii)) requires that an application include a description of the facilities that will be utilized by an institute. Some commenters feared that this would require a description of all facilities which are used or could be used by the institute for its programs, in addition to the institute's facilities. This voluminous interpretation, however, is not the intent of the regulations. It is understood that universities have other resources available to aid their mineral institute departments. The application should include only a short and concise listing of those facilities that will be directly and university utilized by the institute.

Similar interpretative problems have also arisen concerning Section 880.10(4)(c)(iii) (890.10(4)(c)(iii)) requiring a list of staff personnel. Again, the intent of the regulations is to require only the submission of information which directly involves the institute. Accordingly, staff personnel refers to the institute's faculty and staff and in some cases might also include those individuals whose work or research is primarily derived from the institute.

3. One commenter asked for clarification of the Section 880.10(4)(c)(iv) (890.10) requiring mineral institutes to disclose all sources of non-Federal funds. This paragraph requires specific documentation of an institute's budget clearly identifying all sources of non-Federal funds. As in Section 880.6(e) (890.6(e)), the term "funds" is to be interpreted broadly and should include a description of any activity from which the institute derives a financial benefit. Accordingly, this requires evidence of any activity furnished on a quid pro quo or other cost sharing or cost reimbursement agreement.

4. One commenter noted that the September date for filing the annual report provided for in Section 880.10(c)(4)(ii) is inconsistent with the dates described in Section 880.15(a) (890.17(a)). The date in this subsection has therefore been changed.

5. Numerous comments concerned the stringent patent requirements of Section 880.10(c)(5)(v) (890.10(c)(5)(v)). The requirements of this section cannot be modified, however, for the language of the regulation succinctly and explicitly follows the mandate of Section 306(d) of the Act. This provision requires that "all uses, products, processes, patents and other developments" derived from research financed under this Act are to be made "available promptly to the general public." This requirement is quite strict and all institutes and other groups which conduct work under title III must carefully review all funding arrangements in light of this requirement. The Secretary of the Interior does have the ability to vary the provisions of a patent agreement in unusual circumstances. This discretion is severely limited, however, and should not be relied on by the respective institutes when submitting their applications.

6. Several commenters expressed concern over the fact that the patent provision discussed above requires a statement that the institute is willing to enter into an agreement recognizing the patent provisions of title III. Aside from the strict nature of these provisions, commenters questioned whether an institute is the proper authority to sign such an agreement. The board of regents or board of trustees of a university have been recommended as appropriate substitutes. This suggestion has been rejected, because, under Section 800.13 (890.15), approval of allotments can only be given if the institute is legally authorized to enter into an agreement acceptable to the Secretary. This authority should include such patent agreements and Section 880.13(b)(3) (890.15(b)(3)) has been clarified to make this requirement explicit. The Office believes that it is proper to obtain this agreement from the entity which will have direct control over the research funds. Accordingly, if an institute lacks sufficient authority, it should seek the necessary authorization from the appropriate authorities.

7. One commenter asked whether the term "funds" as used in Section 880.10(c)(5)(v) (890.10(c)(5)(v)), refers to all Federal moneys generated under title III. This interpretation is correct; the patent provision applies to all funds, including allotments, research grants, scholarships, and fellowships.

#### **SECTION 880.12 (890.12)**

1. One commenter questioned the appropriateness of the title for this paragraph because the regulations refer to a variety of projects, grants, demonstrations, and research. To avoid confusion over the scope of this paragraph, the title has been changed to "Application for Research Grants" and refers to all types of research grants authorized by section 302. Scholarship and fellowship grant applications are treated separately in new Section 890.13.

2. One individual suggested that the language of Section 880.12(c) (890.12(c)) might require "institutes to match dollar for dollar all Federal funds authorized for research grants. This interpretation is incorrect. Under title III, funding is made available for three distinct purposes: (a) Allotments to mineral institutes, (b) research grants, and (c) scholarships and fellowships. Only the first category requires matching funds. The reference in Section 880.12(c) (890.12(c)) to the provision requiring matching funds refers only to evidence showing that the mineral institute, which desires "research grants," meets the requisite requirements for a "mineral institute." This proof is used solely as a prerequisite for research grant applications and should not be viewed as subjecting this type of application to any requirement for matching funds.  
{38559}

#### **SECTION 880.13 (890.15)**

1. One commenter has suggested that the Director give due consideration to the commercial application of any sponsored research when reviewing research grant proposals. Although not listed specifically in Section 880.13(c) (890.15(c)), this factor is part of the "overall merits" of any research grant and will therefore be considered by the Director. A separate distinct reference is not appropriate, however. The emphasis of the Act should remain focused on the research and training considerations.

2. Several comments were received concerning the errors in the paragraph numbers. The errors in Section 880.13(c)(7) (890.15(c)(7)) have been corrected.

## **SECTION 880.15 (890.17)**

A large majority of the negative comments on the proposed regulations concerned this section requiring quarterly technical progress reports. It was felt that quarterly reports are too burdensome a task for the institutes and that they should be replaced with semiannual or annual reports. Furthermore, there was a certain degree of confusion over the wording that the grant agreement would specify the kind, frequency and content of reports to be submitted. It was suggested that the grant agreement might apply different report procedures.

Due regard was given to each comment received on this subject. Nevertheless, because of the amount of money involved and the extent of the cooperative programs which might be funded, it was considered necessary to keep strict accounting of all funds appropriated. The quarterly reporting procedures have therefore been retained. The institutes should note, however, that such reports can be brief.

Furthermore, the regulation correctly provides that these quarterly reports are in addition to those reports specified in the grant agreement. These quarterly reports will function as a monitoring device so that financial arrangements can be geared to the successive stages of demands of each project. Again, such reports need not be overly burdensome on the institute; they should be kept brief and to the point.

## **SECTION 880.18 (890.20)**

Numerous responses were received on this section. Some comments questioned the appropriateness of the August 15, 1978, deadline and other concerned the adequacy of the financial commitments. These concerns are valid and have led to revision of this section. The August 15, 1978, deadline was unrealistic and has been eliminated. In the final regulations, designated institutes will be given a reasonable time to file applications for the fiscal year 1978. The financial commitment figures have also been deleted. Realistic computations are dependent upon first ascertaining the specific number of institutes which will share all appropriated funds. The total number of institutes designated will determine this figure. The final version of this section therefore provides that all financial data needed by the institutes will be furnished after the Director's designation decisions and prior to the deadline for applications.

## **RENUMBERING OF SECTIONS**

Part 880 is being renumbered as part of the total reorganization of Chapter 7. Part 880 has now been redesignated as follows:

(A) Part 880 is renumbered as Part 890. Sections 880.1 through 890.12 are renumbered as Sections 890.1 through 890.12.

(B) Sections 880.13 and 880.14 are renumbered as Sections 890.15 and 890.16 respectively. Two new sections, 890.13 and 890.14 have been added.

(C) Sections 880.15 through 880.21 have been renumbered Sections 890.17 through 890.23.

## **INFORMATION COLLECTION PROVISIONS**

A number of these regulations require the States or permittees to collect, submit, or retain certain information. By publication of these final regulations, this Department has determined that such information is necessary to the performance of its responsibilities under the Act and must be collected, submitted or retained. Accordingly, these requirements, included in regulation Sections 890.10, 890.11, 890.12, 890.13, 890.17, 890.18, are adopted subject only to review by the General Accounting Office, pursuant to 44 U.S.C. 3512, to assure that a minimum burden is imposed upon States or permittees in the manner in which such information is proposed to be obtained. These specific regulatory provisions will be effective October 5, 1978, unless notified to the contrary. Interested colleges and universities are not precluded from applying for these grants immediately.

## ENVIRONMENTAL IMPACTS

OSM has determined that these regulations do not constitute a major Federal action significantly affecting the quality of the human environment and therefore do not require preparation of an environmental impact statement under Section 102(2)(c) of the National Environmental Policy Act (NEPA). These regulations are largely procedural and ministerial in nature and OSM believes that they will not produce any significant environmental impacts. Moreover, these rules do not propose any specific actions entailing a commitment of resources at this time. Rather, they establish procedures for consideration of commitments in the future. When those commitments are made, in the form of grants for specific research projects, OSM will review them to determine whether they should be subject to the NEPA process.

## DRAFTING INFORMATION

Principal authors of Part 890 are David R. Maneval, Office of Surface Mining, Suellen T. Keiner and Christopher W. Warner, Office of the Solicitor.

NOTE. - The Department of the Interior has determined that these regulations do not constitute significant rules requiring preparation of a regulatory analysis under Executive Order 12044.

Dated: August 21, 1978.

JOAN DAVENPORT, Assistant Secretary, Energy and Minerals.

30 CFR Chapter VII is amended by adding new PART 890 reading as follows:

### **30 CFR PART 890 - GRANTS FOR MINING AND MINERAL RESOURCES, RESEARCH INSTITUTES AND MINERAL RESEARCH PROJECTS; POLICIES AND PROCEDURES**

#### Section

890.1	Scope.
890.2	Objectives.
890.3	Authority.
890.4	Responsibility.
890.5	Definitions.
890.6	Eligibility for mineral institute allotments.
890.7	Eligibility for research grants.
890.8	Eligibility for scholarships and fellowships.
890.9	Programs of institutes.
890.10	Applications for initial allotments to institutes.
890.11	Applications for allotments after the first fiscal year.
890.12	Applications for research grants.
890.13	Applications for scholarships and fellowships.
890.14	Permissible transfers of research and institute assistance funds.
890.15	Approval of allotments and award of grants.
890.16	Other Federal requirements.
890.17	Progress and accomplishment reports.
890.18	Fiscal and accounting.
890.19	Audits and inspections. {38560}
890.20	Filing deadlines and amounts of grants.
890.21	Grant agreements.
890.22	Grant amendments.
890.23	Grant reduction and termination.

AUTHORITY: Pub.L. 95-87; 30 U.S.C. 1221, et seq.

#### **SECTION 890.1 - SCOPE.**

This part sets forth policies and procedures for grants to establish and assist Mining and Mineral Resources Research Institutes and to support mining and mineral research projects.

## **SECTION 890.2 - OBJECTIVES.**

The objectives of the assistance under this part are:

- (a) To support research and training in mining and mineral resources problems related to the mission of the Department of the Interior.
- (b) To contribute to a comprehensive nationwide program of mining and mineral research having due regard for the protection and conservation of the environment.
- (c) To support specific mineral research and demonstration projects of industry-wide application.
- (d) To assist the States in carrying on the work of competent and qualified mining and mineral resources research institutes.
- (e) To provide scholarships, graduate fellowships and postdoctoral fellowships in mining and mineral resources, and allied fields such as mining engineering, civil engineering, soil conservation, hydrology, geology, chemistry, ecology, wildlife biology, land use planning, and resources management.

## **SECTION 890.3 - AUTHORITY.**

- (a) Section 301 of the Surface Mining Control and Reclamation Act of 1977 (Pub.L. 95-87) authorizes the Secretary to make grants available to assist the States in carrying on the work of competent and qualified mining and mineral resources research institutes.
- (b) Section 302(a) of the Act authorizes the Secretary to make grants available to institutes to meet the expenses of mineral research and demonstration projects and of research into any aspects of mining and mineral resources problems related to the mission of the Department of the Interior which may be deemed desirable and are not otherwise being studied.
- (c) Section 302(c) of the Act authorizes the Secretary to provide scholarships, graduate fellowships, and postdoctoral fellowships.
- (d) Section 309 of the Act authorizes the Secretary to appoint an Advisory Committee on Mining and Mineral Resources Research and to designate the chairman of the Advisory Committee.

## **SECTION 890.4 - RESPONSIBILITY.**

- (a) The Secretary of the Interior is responsible for administering the program authorized under title III - State Mining and Mineral Resources and Research Institutes - of the Act and may delegate this authority for all sections, with the exception of section 309(a) and (b), for the administration of activities and operations established therein.
- (b) The Director shall administer the programs for mining and mineral resource research institutes, for mineral research and demonstration projects and for scholarships, graduate fellowships and postdoctoral fellowships.

## **SECTION 890.5 - DEFINITIONS.**

As used in this chapter, the term:

- (a) Act means the Surface Mining Control and Reclamation Act of 1977 (Pub.L. 95-87),
- (b) Title means title III of the act concerning State Mining and Mineral Resources and Research Institutes,
- (c) Secretary means the Secretary of the Interior or his authorized representative,
- (d) Advisory Committee means the Advisory Committee on Mining and Mineral Resources Research appointed by the Secretary.

- (e) Institute means a competent and qualified mining and mineral resources research institute, center, or component of a college or university, established in accordance with the provisions of title III of the act,
- (f) Director means the Director of the Office of Surface Mining Reclamation and Enforcement,
- (g) Scientists and Engineers means individuals in any professional discipline in the life, physical, or social sciences,
- (h) Allotment means the funds made available to an institute on a matching basis in a particular fiscal year pursuant to section 301 of the Act and regulations in this chapter,
- (i) Office means the Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240,
- (j) Assistant Director means the Assistant Director for Technical Services and Research of the Office,
- (k) Mineral resource research means research, investigations, demonstrations, experiments or training in: (1) Mineral exploration, extraction, processing, and development, (2) production of mineral resources; (3) mining and mineral technology; (4) mineral supply and demand; (5) conservation and best use of available supplies of minerals and other resources affected by mineral extraction; and (6) the economic, legal, social, engineering, recreational, biological, geographic, ecological, and land use aspects of mining, mineral resources, and mineral reclamation.

#### **SECTION 890.6 - ELIGIBILITY FOR MINERAL INSTITUTE ALLOTMENTS.**

To be eligible for financial assistance under Section 301(a) of the Act, a college or university must meet all of the following criteria:

- (a) Be either (1) a public college or university or (2) a private college or university in a State which does not have an eligible public college or university, and met all other requirements of this paragraph; {38560}
- (b) Have had in existence on August 3, 1977, a school of mines, division or department conducting a program of substantial instruction and research in mining or mineral extraction, or have established a school of mines, division or department conducting a program of substantial instruction and research in mining or mineral extraction subsequent to August 3, 1977, which has been in existence for at least 2 years prior to the date of application for financial assistance;
- (c) Employ at least four full-time permanent faculty members in the school of mines, division or department conducting instruction and research in mining and mineral extraction;
- (d) Determined to be eligible for assistance in accordance with section 301 of the Act and these regulations by the advisory committee and designated by the Director;
- (e) Has monies available to support the institute which match the Federal share with non-Federal funds on a dollar-to-dollar basis and are at least equal to the Federal share; and
- (f) Designated by the Governor of the State if there is more than one eligible college or university in a State, provided there is no designation to the contrary by act of the State legislature.

#### **SECTION 890.7 - ELIGIBILITY FOR RESEARCH GRANTS.**

- (a) Under section 302(a) of the Act and subject to the availability of appropriations, additional funds may be made available to the institute for:
- (1) Research into any aspects of mining and mineral resources problems, including reclamation and enforcement, which are related to the mission of the Department of the Interior, and are deemed desirable and are not otherwise being studied;
  - (2) Specific mineral research and demonstration projects of industry-wide application, which could not otherwise be undertaken; and
  - (3) Expenses of planning and coordinating regional mining and mineral resources projects by two or more institutes.

(b) The Assistant Director will assemble from the Office and other offices, bureaus, and agencies of the Department of the Interior a listing of mining and mineral resources problems, including reclamation and enforcement. After consulting with the advisory committee and obtaining approval of the Director, the Assistant Director will make available to the institutes a list of topics for research. In special cases, studies not included on this list may be considered and approved if justified and deemed desirable under Sections 890.7(a)(2) or 890.7(a)(3) of this chapter. {38561 }

#### **SECTION 890.8 - ELIGIBILITY FOR SCHOLARSHIPS AND FELLOWSHIPS.**

Under Section 302(b) and (c) of the act, additional funds may be made available to the institute to:

- (a) Provide opportunity for training individuals as mineral scientists and engineers, and
- (b) Provide undergraduate scholarships, graduate fellowships, and postdoctoral fellowships for mining and mineral engineering and closely allied fields.

#### **SECTION 890.9 - PROGRAMS OF INSTITUTES.**

- (a) It shall be the duty of each institute to plan and conduct or arrange for the conduct of:
  - (1) Competent research, investigations, demonstrations, and experiments of either a basic or practical nature, or both, in relation to mining and mineral resources, and
  - (2) Training of mining and mineral engineers and scientists through such research, investigations, demonstrations, and experiments.
- (b) Such research, investigations, demonstrations, experiments, and training may include, without being limited to:
  - (1) The exploration, extraction, processing, development, and production of mineral resources;
  - (2) Mining and mineral technology;
  - (3) Supply and demand for minerals;
  - (4) Conservation and best use of available supplies of minerals; and
  - (5) The economic, legal, social, engineering, recreational, biological, geographical, ecological, and other aspects of mining, mineral resources and mineral reclamation.

#### **SECTION 890.10 - APPLICATIONS FOR INITIAL ALLOTMENTS TO INSTITUTES.**

- (a) In order to obtain an initial allotment under section 301, an institute must submit to the Assistant Director an application (in six copies).
- (b) The institute shall use and follow the standard form for Federal assistance and other procedures specified by the Office of Management and Budget Circular No. A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" (41 FR 32016; July 30, 1976). No preapplication is required.
- (c) The institute shall include on form 424 in section IV of the standard application:
  - (1) Evidence that the institute conforms to each requirement or criterion listed in paragraph 890.6 of this chapter;
  - (2) Evidence of the appointment by the governing authority of the institute of an officer to receive and account for all funds paid under the provisions of this title and to make annual reports to the Secretary on or before the first day of October of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provisions of this title during the preceding fiscal year and of its disbursements on schedules prescribed by the Secretary;
  - (3) Evidence that the institute has plans and will conduct, or will arrange for a component or components of the college or university with which it is identified, to conduct:
    - (i) Competent research, investigations, demonstrations and experiments of either a basic or practical nature, or both, in relation to mining and mineral resources research, and
    - (ii) Training of mining and mineral engineers and scientists through such research, investigations, demonstrations and experiments;

(4) Evidence that the institute has, or may reasonably be expected to have, the capability of doing effective work in one or more of the various mining and mineral resources programs specified in paragraph 890.9 above, which evidence shall include:

(i) The proposed general plan of operation of the institute, showing its organization and a summary of the institute's program activities, by project or other appropriate headings, which includes information concerning the substantive character and the anticipated magnitude, in man-years, of proposed activities,  
(ii) Description of the facilities to be utilized,  
(iii) A list of staff personnel with specific details as to academic and professional training, research experience and other pertinent qualifications, and the time they will devote to research, training or other activities of the institute, and

(iv) The sources of non-Federal funds; and

(5) Evidence that the institute is giving due regard to:

(i) Mining and mineral resources research projects being conducted (or supported) by agencies of the Federal and State governments and other institutes,  
(ii) The interrelation on the natural environment,  
(iii) The varying needs and conditions of the respective States,  
(iv) The advice and assistance as provided by the Secretary, and  
(v) A statement that the institute is willing to enter into an agreement, in a form approved by the Secretary, that all information, uses, products, processes, patents, and other developments resulting from any scientific or technological research or development activity financed with funds supplied pursuant to this title will (with such exceptions and limitations as the Secretary may determine) be made available promptly to the general public.

#### **SECTION 890.11 - APPLICATIONS FOR ALLOTMENTS AFTER THE FIRST FISCAL YEAR.**

(a) After the first fiscal year, in order to obtain subsequent allotments, an institute shall submit to the Assistant Director a request for an annual allotment (in six copies) containing information and materials on form 424 to supplement any previously submitted application as may be needed to make it currently applicable and to reaffirm eligibility. Such requests shall be submitted 6 months prior to the end of the fiscal year and shall include evidence that all reports due under paragraph 890.17 have been submitted or are in preparation for submission.

(b) The request shall include: (1) Evidence that, if any monies received by the authorized receiving officer of any institute under the provisions of this title shall by any action or contingency have been found by the Secretary to have been improperly diminished, lost or misapplied, they must be replaced by the institute concerned; and until so replaced, no subsequent appropriation shall be allotted or paid to the institute;

(2) An outline explaining any changes in its program planned by the institute during the forthcoming fiscal year;

(3) A financial plan relating expenditures to scheduled activity and rate of effort to be expended and indicating the times at which there will be need for specified amounts of allotted Federal funds; and

(4) Evidence that the institute's program is effective, giving due regard to mining and mineral resources problems specified above.

#### **SECTION 890.12 - APPLICATIONS FOR RESEARCH GRANTS.**

(a) A separate application for a research grant under section 302 of the Act shall be submitted in six copies to the Assistant Director, at least one of which shall contain the original signatures of the principal investigator, of the relevant department head, and of an official authorized to commit the institution in business and financial affairs. {38562}

(b) The institute shall use and follow the standard form for Federal assistance and other procedures specified by Office of Management and Budget circular No. A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and other Non-Profit Organizations" (41 FR 32016; July 30, 1976). No preapplication is required.

(c) The institute shall include on form 424 in section IV of the standard application evidence that the institute, conforms to each requirement or criterion listed in Section 890.6 of this chapter.

- (d) Such proposals must set forth for each project:
- (1) The nature and scope of the project to be undertaken,
  - (2) The period during which it will be pursued,
  - (3) The names and qualifications of the senior professional personnel who will direct and conduct the project,
  - (4) The estimated costs of the project, with a breakdown of the costs per year,
  - (5) The importance of the project to the Nation, region, or State concerned, its relation to other known research projects theretofore pursued or being pursued and the anticipated applicability of the research results,
  - (6) The extent to which it will provide opportunity for the training of mining and mineral engineers and scientists,
  - (7) The extent of participation by non-governmental sources in the project, and
  - (8) Assurance that no portion of any grant awarded under this section shall be applied to the acquisition by purchase or lease of any land or interests therein or the rental, purchase, construction, preservation, or repair of any building.

### **SECTION 890.13 - APPLICATIONS FOR SCHOLARSHIPS AND FELLOWSHIPS.**

- (a) Under Section 302(c) of the Act, an institute may apply for a grant to provide undergraduate scholarships, graduate fellowships, and postdoctoral fellowships in mining and mineral resources and closely allied fields. In order to obtain a grant for such scholarships and fellowships, an institute must submit (in six copies) to the Assistant Director a plan for awarding this financial aid based on academic ability.
- (b) The institute shall use and follow the standard form for Federal assistance required in subparagraph 890.10(b). No preapplication is required.
- (c) The institute shall include on form 424 in section IV of the standard application:
- (1) Evidence that the institute has or is presently submitting a similar form 424 for financial assistance under Sections 890.10 or 890.11, and that such form has been supplemented where need be to make it currently applicable.
  - (2) Evidence of the appointment by the governing authority of the institute of a committee to supervise the awarding of scholarship and fellowship funds based on academic ability.
- (d) The scholarship committee shall be required to submit, at the Assistant Director's request, a report of financial assistance. This report shall contain:
- (1) Criteria used by the Committee to review applicants and award financial assistance,
  - (2) Statistical records showing number of applicants reviewed, major fields of interests, degree sought (undergraduate, graduate, doctoral, etc.) and amount of assistance requested;
  - (3) Brief accounting of individuals receiving assistance, including name, field of study, degree sought, and the amount of assistance awarded; and
  - (4) All other items relating to financial assistance that may be requested by the Assistant Director.
- (e) The institute must assure full compliance with title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d. An annual report of financial assistance provided and persons aided shall be included in the annual institute status report required by Section 890.17.
- (f) All individuals, departments, and subdivisions of a university that receive assistance under Section 890.13 shall be subject to the patent requirements set forth in Section 890.16(f).
- (g) An institute may plan, conduct and award scholarship and fellowship funds in conjunction with other departments or subdivisions of its university or with other noninstitute organizations or universities under the following conditions:
- (1) The institute scholarship committee retains supervisory control over the use of their funds;
  - (2) The committee must determine that all programs to be funded contribute to the solution of mining and mineral resources problems and have been approved by the officer appointed under subparagraph 890.10(c)(2);
  - (3) All organizations, universities, and individuals who receive assistance through this section shall be subject to the patent provisions in Section 890.16(f);
  - (4) All participating organizations, universities, and individuals shall agree not to apply any portion of the funds to the acquisition by purchase or lease of any land or interests therein or the rental, purchase, construction, preservation, or repair of any building; and
  - (5) All participating organizations, universities, and individuals agree to supply all interim and final reports as may be required by the institute scholarship committee or the institute officer appointed under Section 890.14(a).

## **SECTION 890.14 - PERMISSIBLE TRANSFERS OF RESEARCH AND INSTITUTE ASSISTANCE FUNDS.**

(a) Under Section 303(b) of the act, institutes are authorized and encouraged to plan and conduct programs under title III in cooperation with each other, with other components of the same college or university or with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved. Institute funds received under Section 890.10 and 890.11 (institute assistance), 890.12 (research grants) and 890.13 (scholarships and fellowships) may be utilized by the institutes to administer and pay for programs conducted by noninstitute organizations, universities or individuals.

(b) Institutes may utilize their funds provided by Sections 890.10, 890.11, and 890.12 to pay for other projects under the following limitations:

(1) The officer appointed under Section 890.10(c)(2), or his designated representative, shall administer, conduct, and supervise all noninstitute funded programs.

(2) All proposals to fund noninstitute activities shall be specifically set forth in all grant proposal applications required under Sections 890.10, 890.11, 890.12, and 890.13.

(3) Neither the approval of a program nor the payment of all or part of the program funds by the administering institute shall commit or obligate the institute, over and above those funds in the amount and for the purposes stated in the funding agreement, to award any continuation of funds or to enter into any other grant or funding agreement, including agreements to cover cost overruns.

(4) No portion of any funds provided by the institute will be applied to the acquisition by purchase or lease of any land or interests therein or the rental, purchase, construction, preservation, or repair of any building.

(5) Participating organizations, universities or individuals shall supply all reports as are requested by the institute scholarship committee or by the supervising officer appointed in paragraph (a) of this section.

(6) All organizations, universities or individuals funded under this section are subject to the patent requirements under Section 890.16(f).

(7) Copies of all agreements for funding of programs conducted by noninstitute organizations, universities, or individuals shall be attached in an appendix to the final annual reports submitted by institutes under Section 890.17(a).

(c) Funds authorized under Section 890.13 may be used to fund scholarship and fellowship programs conducted by noninstitute universities or organizations under the conditions of Section 890.13(g). {38563}

## **SECTION 890.15 - APPROVAL OF ALLOTMENTS AND AWARD OF GRANTS.**

(a) Upon receipt of an application for an allotment grant, contract or other financial assistance, the Assistant Director shall determine whether the submission conforms to the requirements of Section 890.10, 890.11, 890.12, or 890.13 as appropriate. Nonconforming submissions will be returned to the institute with statements of the reasons thereof.

(b) The Director or his designated representative, may approve proposals submitted under these regulations after determining:

(1) That a reasonable relationship exists between the cost to the Government and the probable results to be achieved,

(2) That a college or university as the institute for the State, meets all the requirements for eligibility prescribed in Section 890.6, including the evidence of the availability of matching non-Federal funds,

(3) That the applicant has expressed willingness and is legally authorized to enter into agreements acceptable to the Secretary, including an agreement for public availability of research results as provided in Section 890.10(c)(5)(v), and

(4) That the State and the university have shown a good-faith effort to expand and improve the mineral institute.

(c) The Director or his designated representative shall approve a research grant on the basis of its overall merits, including consideration of:

(1) The need for the knowledge it is expected to produce when completed,

(2) The opportunity it provides for the training of mining and mineral engineers and scientists,

(3) The probability that it will be pursued with competence and completed within a reasonable time,

(4) Freedom from unnecessary duplication of work being performed by others,

(5) Evidence that the proposed projects could not be undertaken without the aid of the proposed grant,

(6) Evidence that previous research projects have been performed in a satisfactory manner and completed on schedule,

(7) Evidence that the proposal for a research project award meets all the requirements set forth in Sections 890.7 and 890.12, and

(8) Evidence that the proposal for a research project was properly endorsed by duly authorized officials of the applicant institute as well as by the principal investigators involved.

#### **SECTION 890.16 - OTHER FEDERAL REQUIREMENTS.**

Each institute receiving assistance in accordance with these regulations must comply with the following provisions which are conditions of each grant:

(a) The requirements of title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d) which provides that no person in the United States shall, on the ground of race, color, religion, sex or national origin, be excluded from participation in, denied benefits of, or subjected to discrimination under, any program or activity receiving Federal financial assistance and the implementing regulations issued by the Secretary of the Interior with the approval of the President (43 CFR part 17).

(b) The Hatch Act, 5 U.S.C. 1501 et seq. as amended, which relates to certain political activities of certain State and local employees. State and local government grantees must ensure compliance on the part of their employees who are covered by the Hatch Act. A State or local officer or employee is covered by the Hatch Act on political activity if his principal employment is in connection with an activity which is financed in whole or part by loans or grants made by the United States or a Federal agency. He is subject to the Act, if as a normal and foreseeable incident to his principal job or position, he performs duties in connection with an activity financed in whole or in part by Federal loans or grants. Specifically excluded is an individual who exercises no functions in connection with that activity or an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

(c) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of or subjected to discrimination under any education program or activity receiving Federal financial assistance.

(d) Executive Order 11246, dated September 24, 1965, as amended by Executive Order 11375, which requires that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin.

(e) The Clean Air Act (42 U.S.C. 7401, et seq., as amended by Pub.L. 91-604 and 95-95) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), which provide for compliance with clean air and water standards at facilities used for the performance of projects supported with Federal funds.

(f) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, nondiscrimination with respect to the handicapped in federally assisted programs.

(g) Institutes shall comply with the requirements of title V of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) for all projects approved by the Director involving coal or lignite.

(h) All uses, products, processes, patents, and other developments resulting from any research, demonstration or experiment performed under grants awarded pursuant to this chapter of these regulations shall be made available promptly to the public, with such exception, or limitation, if any, as the Secretary may find necessary in the public interest. Nothing contained in this limitation shall deprive the owner of any background patent relating to any such activities of any rights which that owner may have under that patent. In carrying out this provision, the Office will make use of and adhere to the Statement of Government Patent Policy promulgated by the President (36 CFR 16887, August 26, 1971), as implemented by the Federal Procurement Regulations (41 CFR 1-9.107) and the Interior Procurement Regulations (Interior Procurement Bulletin No. 11, revised; March 2, 1976).

(i) No portion of any grant awarded under paragraphs 890.6 or 890.7 of this Chapter shall be applied to the acquisition by purchase or lease of any land or interests therein or to the rental, purchase, construction, preservation, or repair of any buildings.

## **SECTION 890.17 - PROGRESS AND ACCOMPLISHMENT REPORTS.**

(a) Annual institute status reports – On or before the first day of October of each year, the officer of each institute who has been duly appointed by its governing authority to receive and account for all funds shall make an annual report to the Director on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provision of this chapter during the preceding fiscal year, and of its disbursements on schedules prescribed by the Director.

(b) Quarterly technical progress reports for institute projects - It shall be the duty of each institute to make a brief quarterly technical report on the progress being made on the research, investigations, demonstrations, experiments, and training that it conducts under the provisions of section 301(b). In general, this report will be a summary of the technical activities of the institute.

(c) Reports on research projects - The grant agreement for each project funded under section 302 of this title shall specify the kind, frequency, and content of reports to be submitted on research projects. In addition, each specific mineral research and demonstration project of industry-wide application and research into any aspect of mining and

mineral resource problems shall submit a quarterly technical report of progress made to date in an annual report which shall include: {38564}

- (1) A description of research accomplished and the findings, results, and conclusions relating thereto,
- (2) Supplementary information suitable for project demonstration purposes,
- (3) A listing of project-related publications or reports issued and papers presented (with copies of such publications being attached to each copy of the annual report), and
- (4) Statements of project work remaining to be accomplished.

(d) Final report - Upon completion of a research study, there shall be prepared a cumulative final report including recommendations, conclusions, and applicability of the findings to the Office of Surface Mining, the Department of the Interior, and the mining or mineral resource issues of the Nation. The final report shall be prepared in accordance with ANSI Z39.18-1974, American national standard guidelines for format and production of scientific and technical reports, and will be required for each project so that the Secretary may promptly disseminate the findings of these publicly supported projects. The technical project officer assigned to each grant will provide detailed guidance about the preparation, format, and submission of required technical reports.

## **SECTION 890.18 - FISCAL AND ACCOUNTING.**

(a) Grant awards under Sections 890.6 and 890.7 shall be subject to the uniform administrative requirements including the financial management systems and financial reporting requirements of the current edition of Office of Management and Budget circular No. A-110 and all attachments thereto.

(b) Advances will be made by the letter of credit method provided the grantee meets all of the requirements specified in attachment I to the Office of Management and Budget circular No. A-110. If the grantee meets all of the specified requirements, but the total grant amount is less than \$1 20,000, advance payments will be made by Treasury check. If the grantee does not meet the specified requirements, payment will be made by reimbursement with Treasury check. Vouchers may be submitted monthly or any regular less frequent period such as quarterly, at the option of the grantee.

## **SECTION 890.19 - AUDITS AND INSPECTIONS.**

(a) In addition to the internal audits which the grantee will perform or have performed in accordance with specifications in attachment F to the Office of Management and Budget circular No. A-110, representatives of the Secretary of the Interior and of the Comptroller General of the United States may conduct onsite audits and inspections of grantee which have received Federal funds under this title.

(b) Audits conducted at the direction or on behalf of the Secretary of the Interior will extend to a determination and appropriate finding of fact concerning compliance with the provisions of the grant, the regularity and accuracy of financial transactions and records, the adequacy of property accountability and control, and the reliability of financial reporting.

(c) Inspections - In relation to the substantive scientific and administrative operations of grantees, the Secretary of the Interior may, with such personnel as he considers qualified and with such procedures as he determines to be suitable, perform inspections of activities authorized and financed pursuant to these regulations. Such inspections will cover acceptability of progress, consistency with approved plans and other factors he deems important to enable him to discharge his responsibilities for achievements consistent with purposes of this title.

#### **SECTION 890.20 - FILING DEADLINES AND AMOUNTS OF GRANTS.**

(a) For the Federal fiscal year ending September 30, 1978, all of the designated institutes determined to be eligible for funding under Section 890.6 will be notified by the Director, as soon as practical after designation, as to the filing deadline for financial assistance under Sections 890.10, 890.12, and 890.13 and as to the amount of funds to be made available for each type of assistance.

(b) Grants for the initial year and all future years may be awarded by the Office based on the number of eligible institutes and available funds.

(c) In all future years (beginning in fiscal year 1979), the Director will advise, on January 1 of each year, all designated institutes, as determined under Section 890.6, concerning the maximum amount of funds available under Sections 890.10, 890.12, and 890.13.

(d) Beginning in fiscal year 1979, the deadline for filing applications for funding under Section 890.10 (new institute allotments), Section 890.11 (renewal of allotments), Section 890.12 (research grants), and Section 890.13 (scholarships and fellowships) will be March 31 of each year.

#### **SECTION 890.21 - GRANT AGREEMENTS.**

(a) If the Director approves an institute's application for funding, the Office shall prepare a grant agreement which includes:

- (1) The approved scope of the program to be covered by the grant;
- (2) The approved budget, including the Federal share;
- (3) Commencement and completion dates for the segment of the program covered by the grant and for major phases of the program to be completed during the grant period.

(b) The Assistant Director shall transmit four copies of the grant agreement by certified mail, return receipt requested, to the institute for signature. The institute shall execute the grant agreement and return all copies of it within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Assistant Director.

(c) The Director or his designated representative shall sign the grant upon its return from the institute and return one copy to the institute. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purpose stated in the grant agreement at the time that the Director signs the agreement.

(d) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover overruns.

#### **SECTION 890.22 - GRANT AMENDMENTS.**

(a) A grant amendment is a written alteration in the grant amount, grant terms or conditions, budget or period or other administrative, technical, or financial agreement whether accomplished on the initiative of the institute or the office, or by mutual action of the agency and the office.

(b) The institute shall promptly notify the Assistant Director in writing by certified mail, return receipt requested, of events or proposed changes which may require a grant amendment, such as:

- (1) Rebudgeting,
- (2) Changes which may affect the approved scope or objective of a program, or
- (3) Changes which may increase or substantially decrease the total cost of a program;

(c) The Director or his designated representative shall approve or disapprove each proposed amendment within 30 days of receipt, or as soon thereafter as possible, and shall notify the institute in writing of the approval or disapproval of the amendment; and {38565}

(d) The grant amendment establishes the effective date of the action. If no date is specified in the grant amendment, then the date the Director or his designated representative signs the amendment will be the effective date of the action.

#### **SECTION 890.23 - GRANT REDUCTION AND TERMINATION.**

(a) Conditions for reduction or termination.

(1) If an institute violates the terms of a grant agreement, the Director may reduce or terminate the grant.

(2) If an institute fails to implement, enforce, or maintain an approved program or agreement, the Director shall terminate the institute's grant or any research grant.

(3) If an institute fails to implement or maintains only a part of the program, the Director shall reduce the grant to the amount of the program being operated by the institute.

(4) If an institute is not in compliance with the following nondiscrimination provisions, the Director shall terminate the grant:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) Nondiscrimination in Federal Assisted Programs, which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations at 43 CFR 17;

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations at 41 CFR 60;

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, nondiscrimination with respect to the handicapped in federally assisted programs;

(iv) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any educational program or activity receiving Federal financial assistance.

(b) Grant reduction and termination procedures.

(1) The Director shall give at least 10 days' written notice to the institute by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Director shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Director shall afford the institute opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Director shall notify the institute of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the institute shall refund or credit to the United States that portion of the grant money paid or owed to the institute and allocated to the terminated portion of the grant. However, any portion of the grant that is required to meet commitments made prior to the effective date of termination shall be retained by the institute.

(5) The institute shall reduce the amount of outstanding commitments insofar as possible and report to the Assistant Director the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate, the institute shall not make any new commitments without the approval of the director.

(7) The Director may allow termination costs as determined by applicable Federal cost principles listed in Federal Management circular No. 74-4.

(c) Appeals. An institute may appeal the decision to reduce or terminate a grant to the Director within 30 days. An institute shall include in an appeal:

(1) The decision being appealed, and

(2) The facts which the institute believes justify a reversal or modification of the decision. The Director shall act upon appeals within 30 days of their receipt, or as soon thereafter as possible, and his decision shall be final for the purposes of further appeal.